

IN THE COURT OF APPEALS OF IOWA

No. 3-1116 / 13-0690
Filed January 9, 2014

JENNIFER LYNNE DENHOF,
Petitioner-Appellant,

vs.

BRIAN NELSON LECLERE,
Respondent-Appellee.

Appeal from the Iowa District Court for Jackson County, Nancy S. Tabor,
Judge.

Jennifer Denhof appeals the district court's order granting physical care of
the parties' child to Brian LeClere. **AFFIRMED.**

Harold J. DeLange II, Davenport, for appellant.

Maria K. Pauly, Davenport, for appellee.

Considered by Danilson, C.J. and Vaitheswaran and Potterfield, JJ.
Tabor, J., takes no part.

DANILSON, C.J.

Jennifer Denhof appeals the district court's order placing physical care of the parties' child with Brian LeClere. Upon our de novo review of the evidence, both parents have abilities and shortcomings. We give deference to the trial court's credibility assessments and conclude the order placing the two-year-old boy in Brian's physical care should be affirmed.

I. Background facts. The parties, Brian LeClere and Jennifer Denhof, are the parents of a boy born in August 2011. Jennifer brought this action to establish custody, visitation, and support. The parties have been exercising shared temporary physical care of the child pursuant to a stipulated court order since December 2011.¹

On March 7, 2013, the district court entered a ruling ordering joint legal custody, establishing a visitation schedule and child support, and placing the child's physical care with Brian. Jennifer appeals.

II. Scope and standard of review. Our review of equity proceedings is de novo. Iowa R. App. P. 6.907. "Although we decide the issues raised on appeal anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses." *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). "This is because the trial court, as the original trier of fact, is in a much better position to judge the credibility of the witnesses than our court on appeal." See *In re Marriage of Vrbanc*, 359 N.W.2d 420, 423 (Iowa 1984) (observing a trial court "is greatly helped in making a wise decision about the

¹ The original stipulated order was modified by a second stipulated order filed June 7, 2012.

parties by listening to them and watching them in person” whereas “appellate courts must rely on the printed record in evaluating the evidence” (citation omitted)).

III. Discussion. This record establishes Brian and Jennifer love their child, and the child is bonded to both parents.

Unfortunately, both parents demonstrate character flaws. The trial court described them as follows:

Brian shows immaturity in his inability to control his alcohol intake, anger, and impulsive behaviors at times. Brian’s drinking is more of an issue than he lets on. . . .

Jennifer has a history of manipulating and manufacturing facts to fit her desires and needs. Jennifer has made unilateral decisions regarding visitation and residency of the child despite court orders. . . . Jennifer’s lack of candor and continuing twisting of the facts in this hearing, after being told about that concern in the last order, is of grave concern to this Court in terms of her ability to continually foster a positive relationship between [the child] and Brian.

The trial court described the abilities of the parties to change, and the court’s difficulty in reaching its decision in stating,

Both parents have the intelligence and ability to change their character flaws and improve themselves in these regards should they choose to do so. . . . Does the Court place the child in the primary care of a parent who clearly wants to control all decisions of the child and unilaterally determine when it is appropriate for visitation to the detriment of the child, places her needs above the child’s when she refuses to send medicine or glasses to visitation exchanges, or place him with a parent who lives 60 miles away, has a temporary restricted driver’s license due to alcohol issues and at times acts immaturely?

The trial court concluded that Jennifer’s lack of candor and her behaviors that proved to be contrary to the child’s best interests were determinative in ordering physical care with Brian.

What became abundantly clear during the two-day trial was that Jennifer has a character flaw of deceit and manipulation when things do not go as she would like. . . . There were many examples of this during the trial with one example being the car seat issue where she lied about its theft and purchase for no apparent reason at all. Her deceit of facts and circumstances extended to medical issues with the child. She also would disrobe the child when she transferred him even in the cold weather. She would not transfer medication, particularly the child's prescription glasses. The Court finds that Jennifer has not acted in the best interests of her child when it comes to visitation exchanges and custody issues. The Court finds that she acts in this manner whenever she is unable to control situations. The Court gave her a very specific visitation schedule, and she was still unable to follow that to the detriment of her child missing contact with his father. Jennifer's past behavior is all the Court has to gauge in how she will act in the future. That behavior shows systematic and continual efforts to thwart visits with Brian or at least makes it more difficult for them to occur.

On appeal, Jennifer argues the trial court gave undue weight to the parties' behavior in a four-to-six month period following the filing of this action and to the testimony from the priest who baptized the child. She contends the trial court gave insufficient weight to Brian's alcohol use. She maintains the trial court was negatively biased against her.

We have thoroughly reviewed the record and transcript of these proceedings. Both parents love their child. Both parents have strengths and flaws. We acknowledge that many of the incidents occurred during the parties' separation and litigation as urged by Jennifer. However, Jennifer's failure to place her child's welfare first (evidenced in such conduct as disrobing the child or in removing the child's glasses before transferring him to Brian for visitation and preventing a visitation with his father near Christmas) and her interference with the child's relationship with Brian (such as scheduling the child's baptism without

informing Brian² and his family, knowing the significance Brian placed on that event) weigh heavily in our determination. It is also difficult to overlook her failure to give Brian proper instructions on the use of the child's medications, and failure to identify Brian as a parent or guardian so he could access the child's medical records. We trust that over the passage of time the parties will develop a better working relationship than their past history reflects. We also rely heavily on the trial court's ability to observe the demeanor of the witnesses. In our de novo review, we reach the same conclusion as did the trial court. We therefore affirm the order placing the child in Brian's physical care.

IV. Appellate attorney fees. Brian requests an award of appellate attorney fees.

An award of appellate attorney fees is within the discretion of the appellate court. Whether such an award is warranted is determined by considering "the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal."

Markey v. Carney, 705 N.W.2d 13, 26 (Iowa 2005) (citations omitted).

Jennifer has an income of \$2000 per month; Brian \$44,200 per year. While recognizing Brian has had to defend the trial court's decision, based on Jennifer's income, which is about half of Brian's, we will not order that she pay appellate attorney fees.

AFFIRMED.

² Jennifer testified she was aware of the import of baptism to Brian and his extended family, and she does not deny that she scheduled the baptism without telling Brian. Brian learned of the baptism from Jennifer's Facebook postings.